

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LAWRENCE ZUCKERMAN and ROBERTA ZUCKERMAN,

Plaintiffs,

- against -

THE CITY OF NEW YORK.

Defendant.,  
-----X

USDC SDNY  
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06 CV 5987 (RPP)

**OPINION  
AND ORDER**

**ROBERT P. PATTERSON, JR., U.S.D.J.**

On May 29, 2009, Defendant City of New York ("Defendant") filed a motion to dismiss Plaintiffs Lawrence and Roberta Zuckerman's ("Plaintiffs") Complaint under Fed. R. Civ. P. 42(b), stating that more than two years had passed since the March 16, 2007 date by which Plaintiffs were ordered by this Court, under threat of dismissal, to have submitted an amended complaint. (Affirmation of Scot C. Gleason in Support of Defendant's Motion to Dismiss ("Gleason Aff.") ¶8.) Plaintiffs have not responded to Defendant's motion. For the reasons that follow, Defendant's motion is GRANTED.

**1. Factual History**

On July 1, 2006, in New York State Supreme Court, Orange County, Plaintiffs filed a complaint against the City of New York seeking to hold the City liable, under the Clean Water Act, the Endangered Species Act, and Title 42 U.S.C. Section 1983, for damage to their property caused by the flooding of the Neversink River on April 2-4, 2005. (Gleason Aff. ¶2.) Plaintiffs did not serve the City with a notice of claim within

90 days of the flood damage and sought permission from the state court to serve a late notice of claim. (*Id.* ¶ 3.) The state court denied Plaintiffs' application to serve a late notice of claim because Plaintiffs' claim was "patently without merit." (Gleason Aff. Ex. A [August 7, 2006 Court order].)

That same day, without knowing that Plaintiffs' application had been denied, the City removed this action to Federal District Court for the Southern District of New York. (Gleason Aff. ¶5.) On October 5, 2006, Judge McMahon of this Court dismissed Plaintiffs' state law claims with prejudice and dismissed Plaintiffs' federal claims without prejudice, directing Plaintiffs to file an amended complaint within 30 days. (Gleason Aff. Ex. 2 [October 5, 2006 Court order].) In a subsequent order of Judge McMahon, the Court extended the time in which Plaintiffs could file an amended complaint until March 16, 2007. (Gleason Aff. ¶8.) On April 16, 2009, this case was transferred to Judge Robert P. Patterson, Jr.

To date, Plaintiffs have not filed an Amended Complaint or a request for an extension of time to file the Amended Complaint.

## **2. Conclusions of Law**

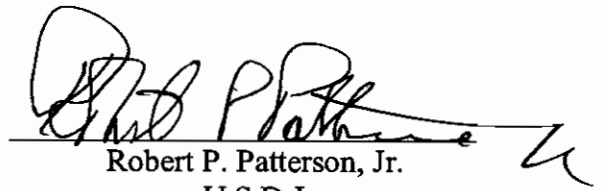
Federal Rule of Civil Procedure 41(b) provides that if a "plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Well over two years have passed since the Court gave a March 16, 2007 deadline to Plaintiffs to file an amended complaint in this matter. In that time, Plaintiffs have filed nothing. Plaintiffs here have not only failed to prosecute but have also not complied with an order of this Court. Accordingly, Defendant's motion to dismiss this case is GRANTED, and Plaintiffs' case is dismissed.

See, e.g., Boral v. United States Copyright Office, 2009 U.S. Dist. LEXIS 8560 (E.D.N.Y. 2009) (dismissing action where the plaintiff had failed to amend the complaint four months after the deadline set by the court had passed).

The Clerk of the Court is directed to mark this matter as closed.

IT IS SO ORDERED.

Dated: New York, New York  
July 17, 2009



Robert P. Patterson, Jr.  
U.S.D.J.

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